



PUBLIC NOTICE

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REQUIREMENTS FOR OPPOSITIONS AND REPLIES REGARDING APPLICATION FOR REVIEW IN MOBILITY FUND PHASE II PROCEEDING

WC Docket No. 10-90
WT Docket No. 10-208

Oppositions Due: April 27, 2018
Replies to Oppositions Due: May 7, 2018

By this Public Notice, we establish the filing requirements for oppositions and replies regarding an application for review filed by the Rural Wireless Association (RWA) in the above-referenced proceeding.

On February 27, 2018, the Rural Broadband Auctions Task Force (Task Force), in conjunction with the Wireline Competition Bureau and the Wireless Telecommunications Bureau (the Bureaus), released a public notice establishing the procedures to be used in the Mobility Fund Phase II (MF-II) challenge process.¹ The Bureaus determined, consistent with the Commission's decision in the *MF-II Challenge Process Order*,² to assess challenges to areas deemed ineligible for MF-II support by using a uniform grid with cells of one square kilometer and a one-quarter kilometer "buffer" radius.³ On March 29, 2018, RWA filed an application for review in which it asks the Commission to modify this procedure by instead requiring the use of a uniform grid with cells of one square mile and a one-quarter mile "buffer" radius.⁴ RWA timely filed its application for review,⁵ and individually served its application on a number of parties that had commented in this proceeding.⁶ Section 1.115(f) of the Commission's rules requires applications for review to be individually served on all parties in a proceeding.⁷ This requirement ensures that all interested parties are timely apprised of the application and the consequent deadline for filing an opposition.

¹ *Procedures for the Mobility Fund Phase II Challenge Process*, Public Notice, DA 18-186 (WTB/WCB Feb. 27, 2018) (*MF-II Challenge Process Procedures Public Notice*). The Public Notice was published in the Federal Register on March 29, 2018. *Procedures for the Mobility Fund Phase II Challenge Process*, 83 Fed. Reg. 13,417 (Mar. 29, 2018).

² *Connect America Fund; Universal Service Reform – Mobility Fund*, Order on Reconsideration and Second Report and Order, 32 FCC Rcd 6282, 6309, 6310, paras. 51, 55 n.162 (2017) (*MF-II Challenge Process Order*).

³ *MF-II Challenge Process Procedures Public Notice*, DA 18-186, at 11-12, paras. 20-21.

⁴ Application for Review of the Rural Wireless Association, Inc., WC Docket No. 10-90, WT Docket No. 10-208, at 10 (filed Mar. 29, 2018) (*RWA Application for Review*).

⁵ 47 CFR §§ 1.115(d), 1.4(b).

⁶ *RWA Application for Review* at 11-12.

⁷ *Id.* § 1.115(f).

Under the Commission's rules, oppositions to an application for review must be filed within 15 days after the application for review is filed.⁸ Accordingly, oppositions to RWA's application for review would be due on April 13, 2018. The Commission's rules further provide that replies to oppositions shall be submitted within 10 days of the filing of the opposition.⁹

We extend the deadline for filing oppositions to RWA's application for review to **April 27, 2018**, and the deadline for filing replies to those oppositions to **May 7, 2018**. Although the Commission does not routinely grant extensions of time,¹⁰ we find that an extension is warranted in this instance because all parties to this proceeding did not receive service in the normal way.¹¹ In addition, we find that an extension of time would provide all parties with sufficient time to review the complex technical issues raised in RWA's application, would allow for the development of a more complete record, and would otherwise serve the public interest.¹²

We also waive the service requirements in Section 1.115(f) of the Commission's rules¹³ and instead allow parties to file oppositions and replies in ECFS. Section 1.3 provides that the Commission may waive its rules and requirements where there is "good cause shown" to do so.¹⁴ Good cause, in turn, may be found "where particular facts would make strict compliance inconsistent with the public interest."¹⁵ A waiver is therefore "appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."¹⁶

In this instance, we find good cause to waive the service rule for oppositions and replies. Under Section 1.115(f), the Commission provides that "[o]ppositions to the application for review shall be served on the person seeking review and on parties to the proceeding" and that "replies to the opposition(s) . . . shall be served on the person(s) opposing the application for review and on parties to the proceeding."¹⁷ But the *MF-II Challenge Process Procedures Public Notice* presents special circumstances that warrant a deviation from this general service rule because the rule would unduly burden filers by requiring them to individually serve each party in the MF-II proceeding. Unlike most Bureau-level decisions that give rise to applications for review, which involve adjudications with a handful of parties, the *MF-II Challenge Process Procedures Public Notice* adopts final requirements and

⁸ *Id.* § 1.115(d).

⁹ *Id.*

¹⁰ *Id.* § 1.46(a).

¹¹ See *Applications of Fred R. Morton, Jr.*, Memorandum Opinion and Order, 5 FCC Rcd 606, 606, para. 1 n.1 (1990); *Comcast Cable Communications, LLC*, Order, 24 FCC Rcd 4902, 4902, para. 3 (MB 2009).

¹² See *Wireless Telecommunications Bureau Establishes Filing Deadline for Oppositions to Applications for Review and Replies in Data Roaming Proceeding*, Public Notice, 30 FCC Rcd 596, 596-97 (WTB 2015); *Petition of GCB Communications, Inc.*, Order, 27 FCC Rcd 10951, 10951, para. 3 (WCB 2012); *The Spectrum and Competition Policy Division of the Wireless Telecommunications Bureau Grants the Motion for Extension of Time Filed by the National Park Service to File an Opposition to the Application for Review Filed by Wireless Network Properties, LLC Regarding a Proposed Tower in Chattanooga, Tennessee*, Public Notice, 22 FCC Rcd 11960, 11960 (WTB 2007).

¹³ 47 CFR § 1.115(f).

¹⁴ *Id.* § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown.").

¹⁵ *Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). In making this determination, the Commission may "take into account considerations of hardship, equity, or more effective implementation of overall policy." *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹⁶ *Ne. Cellular Tel. Co.*, 897 F.2d at 1166.

¹⁷ 47 CFR § 1.115(f).

procedures that emanated from a six-year-long proceeding with hundreds, if not thousands, of filings and parties.¹⁸ A waiver of the service rule also would serve the public interest by reducing the burden of filing oppositions or replies, thereby encouraging participation by interested parties. In this limited circumstance, the filing of oppositions and replies in ECFS would provide a suitable alternative to individualized service.

Thus, pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934, as amended,¹⁹ and Sections 0.91(b), 0.131(a), 0.291, 0.331, 1.3, and 1.46 of the Commission's rules,²⁰ we extend the deadline for filing oppositions and replies regarding RWA's application for review and waive the service rules for oppositions and replies in Section 1.115(f) as set forth herein.

Ex Parte Presentations

This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.²¹ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Other provisions pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules.

Filing Procedures

Under the Commission's current procedures for the submission of filings and other documents, interested parties may file oppositions and replies on or before the dates indicated on the first page of this document. Submissions may be filed electronically through the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. We strongly encourage interested parties to file electronically.

Electronic Filers: Documents may be filed electronically using the Internet by accessing the ECFS at <http://apps.fcc.gov/ecfs>. Filers should follow the instructions provided on the website for submitting documents. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket numbers, WC Docket No. 10-90 and WT Docket No. 10-208. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message: "get form." A sample form and directions will be sent in response.

Paper Filers: Parties who choose to file by paper must file an original and three copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be

¹⁸ In a similar context where a proceeding involves twenty or more parties, the Commission allows a public notice to take the place of individualized service by the Commission. *Id.* § 1.47(a) ("In proceedings involving a large number of parties, and unless otherwise provided by statute, the Commission may satisfy its service obligation by issuing a public notice that identifies the documents required to be served and that explains how parties can obtain copies of the documents."); *id.* § 1.47(a), note to paragraph (a) ("The Commission expects that service by public notice will be used only in proceedings with 20 or more parties.").

¹⁹ 47 U.S.C. §§ 154(i), (j).

²⁰ 47 CFR §§ 0.91(b), 0.131(a), 0.291, 0.331, 1.3, 1.46.

²¹ *Connect America Fund; Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152, 2240, para. 252 (2017); see 47 CFR §§ 1.1200(a), 1.1206.

delivered to FCC Headquarters at 445 12th Street, SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

Copies of filed documents will be available for public inspection between 8:00 a.m. and 4:30 p.m. ET Monday through Thursday, or 8:00 a.m. to 11:30 a.m. ET on Fridays, in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW, Washington, DC 20554, and will also be accessible through the search function on the ECFS web page at <http://www.fcc.gov/ecfs>.

Persons with Disabilities: To request materials in accessible formats (Braille, large print, electronic files, audio format) for people with disabilities, send an e-mail to fcc504@fcc.gov or call the Consumer and Government Affairs Bureau at (202) 418-0530 or (202) 418-0432 (TTY).

For further information, please contact Audra Hale-Maddox of the Wireless Telecommunications Bureau, Auctions and Spectrum Access Division, at (202) 418-0794 or Audra.Hale-Maddox@fcc.gov.

Action by the Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau.

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